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February 12, 2003

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

*Ex Parte*

The Honorable Michael K. Powell  
Chairman  
Federal Communications Commission  
445 - 12th Street, SW, Room 8 B201  
Washington, D.C. 20554

The Honorable Kevin J. Martin  
Commissioner  
Federal Communications Commission  
445 – 12th Street, SW, Room 8 A204  
Washington, D.C. 20554

**The Honorable Kathleen Q. Abernathy**  
Commissioner  
**Federal Communications Commission**  
445 – 12th Street, SW. Room 8 B115  
Washington, D.C. 20554

The Honorable Jonathan S. Adelstein  
Commissioner  
Federal Communications Commission  
445 – 12th Street, SW, Room 8 C302  
Washington, D.C. 20554

The Honorable Michael J. Copps  
Commissioner  
Federal Communications Commission  
445 12th Street, SW, Room 8 A302  
Washington, D.C. 20554

Re: CC Docket Nos. 01-338, 96-98 and 98-147

Dear Commissioners:

Americatel Corporation ("Americatel"),<sup>1</sup> a long distance carrier specializing in serving Hispanic communities throughout the United States, urges the Federal Communications

1 Americatel, a Delaware corporation that is a subsidiary of ENTEL Chile, is a common carrier providing domestic and international telecommunications services. ENTEL Chile is the largest provider of long distance services in Chile. Americatel also operates as an Internet Service Provider ("ISP"). Americatel offers **presubscribed** (11), dial-around, and prepaid long distance services, as well as private line and **other high-speed services** to its business customers. Americatel does not, at the present time, provide any local services to its customers, though it might need to do so in the future, especially if it finds itself unable to compete against the bundled

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Commission ("FCC" or "Commission") to retain local switching as an available unbundled network element ("UNE") and maintain a telecommunications carrier's ability to combine the local switching UNE ("UNE Switching") with other UNEs, as unbundled network element platforms ("UNE-Ps"). A decision by the FCC to restrict access to UNEs will likely operate as the death knell for smaller long distance carriers, as well as for competitive local exchange carriers ("CLECs"). Additionally, such action would unlawfully eliminate the regulatory role that Congress intended for state public utility commissions ("PUCs"), which are in a much better position than the FCC to judge local market conditions and to make the factual determination as to whether access to a specific UNE meets the "necessary" and "impair" standards of Section 251(d) of the Communications Act of 1934, as amended ("34 Act").<sup>2</sup>

As Americatele demonstrates herein, the continued existence of a competitive long distance market depends on the contemporaneous existence of a competitive local market. To the extent that the FCC decides to eliminate access to UNE Switching and, therefore, UNE-Ps (or prevents PUCs from requiring such access), it is more likely than not that many CLECs will be unable to compete with the BOCs. Any significant lessening of local competition would, in turn, likely strengthen the hand of the BOCs in the market for long distance services as well, as BOCs will then be able to continue to resist the price cuts for basic local services which were expected by Congress when it rewrote the 34 Act in 1996. This will, in turn, enable the BOCs to begin domination of the long distance market by offering deeply discounted toll rates (a largely deregulated service) until they gain a dominant market share in the long distance arena too. This then would likely permit the BOCs to return to their pre-1984 Divestiture status as dominant long distance carriers and, would, effectively, undo the gains to both consumers and the overall economy that have resulted over the past two decades from long distance competition.

The Telecommunications Act of 1996 ("96 Act")<sup>3</sup> fundamentally altered the telecommunications landscape that was established by implementation of the Modification of Final Judgment ("MFJ") in the Bell System antitrust case.<sup>4</sup> As the Commission is well aware,

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local and long distance packages being offered at deeply discounted prices by the Bell Operating Companies ("BOCs") in some of the markets in which Americatele operates.

<sup>2</sup> 47 U.S.C. §251(c).

<sup>3</sup> Pub.L. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§151 *et seq.*

<sup>4</sup> *United States v. American Tel. and Tel. Co.*, 552 Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom Maryland v. United States*, 460 U.S. 1001 (1983).

the MFJ removed the BOCs from the long distance market, separating that emerging competitive distance market from the BOCs' power and control over local exchange services. However, in exchange for new rules that forced open the local telephone monopolies, including the requirement under Section 251(c) of the **34** Act that BOCs offer unbundled access to network elements, the 96 Act permitted the BOCs to reenter the long distance market. The very clear Congressional intent behind the 96 Act was that no carrier would have sufficient economic power to dominate any market—long distance or local exchange.

While some level of local competition has developed since 1996, it is fair to say that local wireline competition has lagged well behind the development of wireless competition during that same time period. This can be seen from the contrast in prices for basic local wireline services, which have remained steady or even increased in some locations, to prices for basic wireless services, which have declined significantly and which generally include many features for which the BOCs charge extra. To the extent that the elimination of access to UNE Switching and UNE-Ps eliminates local competition from CLECs, the BOCs are more likely to dominate both the local service and long distance markets. Such a result is clearly not in the public interest and is contrary to both the 96 and 34 Acts.

Since the reentry of the BOCs into long distance services, we have seen them begin to bundle local and long distance services in a manner that indicates the extent of their continued economic power in the market. The BOCs are offering their customers the greatest savings on long distance calls only when they also purchase large packages of local services. For example, BellSouth offers its Florida customers its best international long distance rates only when those customers also subscribe to BellSouth's Complete Choice® plan or Area Plus® calling plans, which start at \$30 per month.<sup>5</sup> Fundamental economic principles would expect, to the extent that the Florida residential market were truly competitive and BellSouth desired to establish itself as a viable long distance carrier, it would offer discounted prices to all of its customers. However, the facts indicate that BellSouth must feel so confident of its local market position that it will offer its best long distance market-entry prices only to those residential customers who are willing to purchase large bundles of local services.

SBC Communications' ("SBC") confidence in its California local market position seems even stronger since it offers its California customers: "Special long distance rates for SBC Total Connections customers."<sup>6</sup> SBC's "Total Connections" bundle is priced at nearly \$90

<sup>5</sup><http://www.bellsouth.com/apps/ipc/ICReqDispatcher?userEvent=getOfferDetailEvent&catId=117&offerGroupId=94> (visited February 11, 2003).

<sup>6</sup> [http://www02.sbc.com/Products\\_Services/Residential/Catalog/1,13--1-3-13,00.html](http://www02.sbc.com/Products_Services/Residential/Catalog/1,13--1-3-13,00.html) (visited February 11, 2003).

per month.<sup>7</sup> While this service bundle includes Internet access, the price of nearly \$90 per month still greatly exceeds the national average monthly price for residential local service of \$21.84 (October 2001).<sup>8</sup> One would expect that, to the extent that the BOCs were truly feeling strong competition for their residential customers, the BOCs would not only be offering low long distance prices to all of their customers, but also lowering the monthly price of basic local service and associated features.)

What is even more disturbing to Americatele is that the BOCs seem to be using their economic power in the local market to "finance" low-ball long distance rates in order to gain market share, in addition to the inherent advantages they have amassed, such as huge customer databases, switching facilities, billing and other technical infrastructure. By conditioning ultra-low long distance prices on the purchase of local service packages that are priced above what many consumers normally spend for basic telephone services, the BOCs can effectively afford to finance their long distance price war without losing any overall revenues. For example, if a BOC can obtain \$40 in monthly revenue from a customer who selects a local service bundle in order to obtain the lowest long distance prices, rather than the more typical \$20-\$25 per month for more basic services, the same BOC can afford to discount its long distance prices by \$15-to-\$20 per month without experiencing any reduction in revenues.

Smaller long distance carriers simply cannot afford to compete with those prices and, in the absence of access to UNE-Ps from the BOCs, the smaller carriers cannot realistically enter the local market to offer their own local and long distance bundles or partner with CLECs for the same purpose. The BOCs' economic power in the local market is permitting them to offer long distance rates at levels that smaller long distance carriers, including most CLECs, cannot afford to offer over the long term. These BOC pricing practices, while perhaps not

<sup>7</sup> See [http://www02.sbc.com/Products\\_Services/Residential/ProdInfo\\_1/1,,856--1-3-13,00.html](http://www02.sbc.com/Products_Services/Residential/ProdInfo_1/1,,856--1-3-13,00.html) (visited February 11, 2003). SBC is not alone in its bundling of its best long distance prices with large bundles of local services. For example, BellSouth offers its Florida customers its best international long distance rates only when those customers also subscribe to BellSouth's Complete Choice® plan or Area Plus® calling plans, which start at \$30 per month.

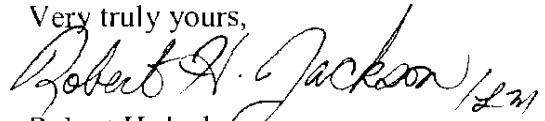
<sup>8</sup> Wireless Competition Bureau, "Trends in Telephone Service," at 2 (rel. May 22, 2002).

<sup>9</sup> Contrast price trends in the wireless market. BellSouth and SBC's subsidiary, Cingular Wireless, offers its Miami customers packages that include domestic long distance, three-way calling, call forwarding, caller ID and call waiting services for as little as \$19.99 per month. [http://onlinestore.cingular.com/webapp/wcs/stores/servlet/ES\\_PROD\\_RATE?storeAlias=sfabmi&storeId=13051&catalogId=13051&langId=1&svcAreaId=MIC&ratePlanType=Local](http://onlinestore.cingular.com/webapp/wcs/stores/servlet/ES_PROD_RATE?storeAlias=sfabmi&storeId=13051&catalogId=13051&langId=1&svcAreaId=MIC&ratePlanType=Local) (visited February 11, 2003).

actually rising to the level of predatory pricing, reflect a threat to true long distance competition today and the potential BOC re-monopolization of the long distance market tomorrow.

Unless the Commission is willing to risk turning back the clock to the 1970s in the telecommunications market and to go against the forward looking, global trend, it must ensure that local competition from CLECs is not snuffed out by the BOCs. As evidenced by the BOCs' sei-vice pricing policies discussed above, the local market is not fully competitive. Moreover, the termination of CLEC access to UNE Switching and UNE-Ps in most markets would likely destroy the small level of local competition that exists today and even enable the BOCs to regain control over long distance. Americatel, therefore, believes that the proper course is for the FCC to allow the PUCs to make the "necessary" and "impaired" determinations required by Section 251(d). It is they, after all, that are closest to the local market conditions that, according to the Court of Appeals, must be evaluated in making those determinations.

Very truly yours,

A handwritten signature in cursive script that reads "Robert H. Jackson". To the right of the signature, the date "2/21" is written.

Robert H. Jackson  
Counsel for Americatel Corporation